IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.K.DENESAN

MONDAY, THE 22ND JANUARY 2007 / 2ND MAGHA 1928

WP(C).No. 25078 of 2006(I)

PETITIONER:

S.MOHANDAS, WELFARE OFFICER,
COCHIN PORT TRUST, WELLINGDON ISLAND,
COCHIN.

BY ADV. SRI.N.SUKUMARAN
SRI.S.SHYAM
SRI.LATHEESH SEBASTIAN
SRI.N.K.KARNIS
SRI.BOBBYMATHEW KOOTHATTUKULAM

RESPONDENTS:

1. **COCHIN PORT TRUST, REPRESENTED BY ITS SECRETARY, KOCHI-682 009.**
2. **STAFF SELECTION COMMITTEE FOR SELECTION OF CLASS I POSTS, COCHIN PORT TRUST, REPRESENTED BY ITS CHAIRMAN, PORT TRUST, KOCHI-682 009.**
3. **DEPARTMENTAL PROMOTION COMMITTEE FOR CLASS I POSTS, COCHIN PORT TRUST, REPRESENTED BY ITS CHAIRMAN, PORT TRUST, KOCHI-682 009.**
4. **SECRETARY, COCHIN PORT TRUST, COCHIN-9.**

BY ADV. SRI. A.K. JAYASANKAR NAMBIAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 19/12/2006, THE COURT ON 22/01/2007 DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1:	**COPY OF THE RELEVANT EXTRACT OF THE RECRUITMENT RULES RELATING TO INDUSTRIAL RELATIONS OFFICER FOR THE 1ST RESPONDENT.**
EXT.P2:	**COPY OF THE REGULATION FOR PROMOTION POLICY OF THE 1ST RESPONDENT, PUBLISHED IN 1964.**
EXT.P3:	**COPY OF THE RELEVANT EXTRACT FROM PART IV OF G.I.DEPT. OF PER.AND TRAINING O.M.NO.22011/5/86 LSH (D) DTD. 10/04/1989 AS AMENDED.**
EXT.P4:	**COPY OF THE COMMUNICATION ISSUED BY THE 4TH RESPONDENT DTD. 5/08/2006 BEARING NO.A9/IRO/2002/S.**
EXT.P5:	**COPY OF THE ADVERTISEMENT PUBLISHED BY THE 4TH RESPONDENT IN NEW INDIAN EXPRESS DAILY DTD. 18/08/2006.**
EXT.P6:	**COPY OF THE ORDER OF THE 1ST RESPONDENT BEARING NO. A9/IRO/2005.S. DTD. 5/01/2006.**
EXT.P7:	**COPY OF THE ORDER OF THE 1ST RESPONDENT BEARING NO. A9/IRO/2006-S DTD. 25/08/2006.**
EXT.P8:	**COPY OF THE JUDGMENT OF THE HON'BLE HIGH COURT OF KERALA IN O.P.NO.462/2003EDTD. 14/03/2006.**
EXT.P9:	**COPY OF A LIST PREPARED BY THE PETITIONER.**
EXT.P10:	**COPY OF THE ORDER ISSUED BY THE GOVERNMENT OF INDIA ADDRESSED TO THE 1ST RESPONDENT BEARING NO.A-11011/1/ 2003-PE-II DTD. 30/12/2003.**
EXT.P11:	**COPY OF THE RECRUITMENT RULES RELATING TO LEGAL ASSISTANT UNDER THE 1ST RESPONDENT.**
EXT.P12:	**COPY OF THE CIRCULAR DTD. 21/05/2002 ISSUED BY THE 1ST RESPONDENT BEARING NO.A9/IRO/2002-S.**

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EXT.P13: COPY OF THE REGULATION 109 OF THE DOCK WORKERS (SAFETY, HEALTH AND WELFARE) REGULATION 1990.

EXT.P14: COPY OF THE ORDER REGARDING DUTIES AND RESPONSIBILITIES OF THE WELFARE OFFICER IN TRAFFIC DEPT. OF THE 1ST RESPONDENT DTD. 25/08/1983 BEARING NO.A4/128/81/S.

EXT.P15: COPY OF THE LETTER ISSUED BY THE CHAIRMAN OF THE 1ST RESPONDENT DTD. 5/03/2005 BEARING NO.D.O.NO.SECY/ICIT/05/S.

1ST RESPONDENT'S EXHIBITS:

EXT.R1(A): COPY OF THE PROCEEDINGS OF THE DEPARTMENTAL PROMOTION COMMITTEE HELD ON 05/08/2006 FOR THE POST OF INDUSTRIAL RELATIONS OFFICER.

EXT.R1(B): COPY OF THE PROCEEDINGS OF THE DEPARTMENTAL PROMOTION COMMITTEE HELD ON 08/08/2006 FOR THE POST OF INDUSTRIAL RELATIONS OFFICER.

/TRUE COPY/

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K.K. DENESAN, J.

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W.P.(C) No. 25078 OF 2006 I
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Dated this the 22nd January, 2007

J U D G M E N T

Industrial Relations Officer is a Class I post in the Cochin Port Trust (Respondent No. 1). The method of appointment, qualifications etc. for the above post are prescribed in Ext. P1 rules. Though the post is notified as a selection post the method of appointment is by promotion from Welfare Officer with 3 years regular service in that grade. Direct recruitment is possible only if the method of promotion fails. Qualifications are given in column 8 of Ext. P1. The same reads:

> "Master's Degaree in social work/Labour welfare/Personnel Management/Industrial Relations or Degree with Diploma in any one of the above subjects or Degree in Law with Labour laws as an elective subject Exp: 5 years in a managerial capacity dealing with Labour. Desirable: Knowledge of Malayalam."

The petitioner is a Welfare Officer under the 1st respondent. He has approached this Court against the decision of the respondents to fill up the vacancy of Industrial Relations Officer by direct recruitment.

2. It is contended that the decision of the respondents to deny promotion to the petitioner despite his eligibility and qualification for the post is arbitrary, illegal and vitiated by malafides. Besides the statement of facts and grounds in the writ petition, the pleadings in this case consist of the counter affidavit filed on behalf of the respondents, the reply affidavit of the petitioner, the additional counter affidavit of the respondents and the additional reply affidavit of the petitioner.

3. The post of Industrial Relations Officer fell vacant on 1-8-2006 consequent to the retirement of the then incumbent Shri. M.M. Joseph. The respondents took steps to fill up the vacancy by selecting and promoting the suitable candidate. The feeder category is Welfare Officer. The petitioner admittedly is a senior member of the feeder category. It is also admitted that he possesses the academic qualifications as also the requisite period of experience as per Ext. P1. The respondents on scrutiny of the service records of Welfare Officers found that the petitioner is the only person who possesses the prescribed qualifications. As

the method of promotion to the post was by selection, a Departmental Promotion Committee (DPC) was constituted to consider the candidature of the petitioner.

4. The counter affidavit says that on scrutiny of the documents evidencing the qualifications possessed by the petitioner as also his confidential record, the D.P.C. found him to be qualified for the post. However, taking into account the fact that the post of Industrial Relations Officer is a selection post and the nature of duties to be performed by the incumbent was such as would require that officer 'to be possessed of certain qualities in addition to the educational qualification and experience', the D.P.C chose to invite the candidate for a personal interview so as to assess his suitability for the post. It is the case of the respondents that after interviewing the petitioner, the D.P.C. came to the conclusion that he need not be selected because he would not be suitable to discharge the onerous responsibilities that are required of an Industrial Relations Officer. The respondents took a decision to exclude his candidature for the post in question.

5. Exts. R1(a) and (b) produced along with the counter affidavit are the copies of the proceedings of the D.P.C. held on 5-8-2006 and 8-8-2006 respectively. It will be useful to extract the following paragraphs from Exts. R1(a) and R1(b):

> "The Committee has perused the service particulars and CR dossiers of the candidates available in the feeder category. Among two officers in the feeder category, it is noted that only Shri. Mohandas has fulfilled the requirement of 3 years experience as Welfare Officer as per RRs. As such, Shri. Mohandas fulfills the minimum required qualifications and experience in the feeder category. It is noted that Shri. Mohandas was promoted to the post of Welfare Officer on 15-1-2003 and has 3 years and 7 months experience as Welfare Officer.
>
> In view of the above and due to the fact that the post is very critical, DPC decided to have a personal interview with Shri. S. Mohandas in order to assess his suitability for selection to the post of Industrial Relations Officer at 3.30 p.m. on 08-08-2006."

> "DPC members interviewed the candidate with a view to assess his abilities with reference to the nature of duties of the post of Industrial Relations Officer. After perusal of the service records, CR dossiers and personal interview of the candidate, the Committee concluded that Shri. Mohandas would not be suitable for promotion to the post of Industrial Relations Officer and recommended to fill up the post on direct recruitment basis as provided in the Recruitment Rules."

On the basis of the decision that the method of promotion has failed, the respondents decided to resort to the alternate method of direct recruitment.

6. What followed was the publication of the notification inviting candidates for direct recruitment for the post of Industrial Relations Officer. At that stage, the petitioner filed this writ petition.

7. On 30-11-2006 this Court passed an interim order directing that the selection process for appointment to the post of Industrial Relations Officer may continue, but final proceedings shall be passed only after obtaining orders from this Court. This Court directed the respondents to produce the records prepared at the time of the interview referred to in the counter affidavit. The respondents produced the records as directed by this Court.

8. In the reply affidavit, the petitioner averred that he, in his capacity, as Welfare Officer has been rendering meritorious service to the satisfaction of his superiors, that there is absolutely no adverse remarks against him in the service records including his confidential records, and that the respondents,

despite the eligibility, the suitability and the fitness of the petitioner, approached the issue with the malicious intention to deny him his legitimate right to be promoted. According to him, the interview, which is not a procedure contemplated by the rules, was held, to suit the malafide object of the respondents. The reply affidavit says that there are about 22 categories of Class I posts under the 1st respondent and most of them are pivotal posts involving greater responsibilities than that of Industrial Relations Officer and all those posts are filled up by promotion without conducting the interview of the candidates. According to the petitioner, this is the only solitary case where a deviation has been made.

9. In the additional affidavit filed on behalf of the respondents particulars relating to the nature of the duties, the functions and the responsibilities attached to the post of Welfare Officer and those of Industrial Relations Officer have been furnished in order to impress upon this Court that a Welfare Officer cannot be promoted automatically as Industrial Relations Officer. The additional counter affidavit

says that the decision taken by the respondents to hold interview before clearing the candidature of the petitioner was taken in good faith and that the interview was found necessary in the circumstances, more so, in a situation where there is only one such post in the entire organisation. In paragraph 5 of the additional affidavit filed on behalf of the respondents on 9-12-2006 it is stated inter alia that 'while the petitioner was found to satisfy the requirements of the educational qualification and experience for the post, he was found lacking in certain vital qualities which are required for the discharge of his duties and responsibilities in the post of Industrial Relations Officer in the Cochin Port Trust.'

10. I have heard Shri. N. Sukumaran, learned senior counsel for the petitioner and Shri. A.K. Jayasankar Nambiar, learned counsel for the respondents.

11. The points for consideration are (1) whether the respondents have acted in accordance with law in taking a decision to interview the petitioner even

after the D.P.C. found him eligible and qualified for the post and (ii) whether the decision of the D.P.C. finding the petitioner unsuitable for the post based on the kind of interview held by it is valid and sustainable?

12. On the strength of Ext. P3, it was contended by the learned Senior Counsel for the petitioner that no personal interview unless specifically provided in the rules, can be held to assess the suitability of the candidate. In Ext. P3 it is stated that whenever promotions are to be made by the method of 'Selection-cum-Seniority' and 'Selection by Merit' by D.P.C. and the Administrative Ministry desires that an interview should form part of the selection process, necessary provision should be made in the Recruitment Rules.' According to the respondents, Ext. P3 governs the Central Government Departments and the same has not been made applicable to the Cochin Port Trust. The contention taken in the counter affidavit in this respect is that Ext. P3 office memorandum issued by the Government of India does not automatically apply to the Cochin Port Trust unless the same has been

specifically adopted for operation within the Cochin Port Trust through Board Resolutions to that effect. It is also contended that there is nothing in the notified rules or regulations which prevents the respondents from holding an interview in order to assess the suitability of a candidate to a selection post in cases where the D.P.C. wants to assess the candidate on his suitability after finding him eligible for the post. Having considered the rival contentions, I am inclined to accept the stand taken by the respondents that the D.P.C. shall not be deprived of its basic authority to take such steps as are necessary to assess the suitability of the candidates or the comparative merit of the candidates, unless such a step or procedure is expressly prohibited by the law that governs the selection.

13. In the above view, I considered the next issue, namely, whether the interview held by the D.P.C. leading to the conclusion that the petitioner was unsuitable suffers from any legal infirmity. In this context, it is relevant to reproduce the particulars furnished in the form of statement showing

the C.R. Gradings of the petitioner:

Sl. No.	Name & Designation	C.R. Criterion					Remarks
		2001-02	2002-03	2003-04	2004-05	2005-06	
1.	Sri. S. Mohandas, Welfare Officer.	Fit	VG	Excell.	VG	VG	

Therefore the performance of the petitioner as Welfare Officer during the year 2002-03 was 'very good', that during 2003-04 was 'excellent', and that during 2004-05 and 2005-06 were 'very good'. The post of Welfare Officer being the feeder category, the petitioner is justified in maintaining position that his claim cannot be thrown overboard alleging poor performance as Welfare Officer. He has got the prescribed academic qualifications as also the experience. Therefore, weighty and convincing reasons establishing his unsuitability or incapacity to get promotion to the post of Industrial Relations Officer must appear on record. There must exist materials to hold that he does not deserve to be selected for the post. It is admitted position that upto the stage of interview, the respondents did not have any material which could be used against the claim of the petitioner for promotion.

The respondents rely exclusively on the result of the interview and interview alone to deny promotion to the petitioner. Certainly, under such circumstances, it is the duty of this Court to examine the relevant records so as to have the satisfaction that the conclusion reached by the members of the D.P.C. was the result of an objective assessment made by those members; a conclusion which is free from arbitrariness. It is seen that apart from the proceedings of the D.P.C. held on 5-8-2006 and 8-8-2006 (Exts. R1(a) and (b)) there is nothing to show as to what transpired at the time of interview. There is nothing to show as to how the members of the D.P.C. assessed the suitability of the candidate by means of the interview. The files do not show or indicate as to what transpired at the time of interview. The files do not reflect as to the modus employed by the members of the D.P.C. It is not understood whether they put any questions to the petitioner and if so, what answers the petitioner gave. It is also not understood as to whether any other modus or technic was employed to have an objective assessment of the merit, suitability, capacity etc. of the

petitioner to get promotion to the post of Industrial Relations Officer. Was the purpose of the personal interview, to simply see the petitioner and form an opinion on that basis? Nothing is discernible from the records. Therefore, the inference that the members of the D.P.C. had simply formed a subjective opinion that the petitioner was not suitable for the post, is irresistible. The interview has turned out to be a farce. In order to form such subjective opinions, it was not necessary for the members of the D.P.C. to call the petitioner for an interview. The petitioner, who was found to be eligible and qualified for the post shall not be branded as unsuitable for the post simply on the basis of the subjective opinion formed by the members of the D.P.C. The very purpose of interview is to enable the members of the D.P.C. to form their opinion based on an objective assessment. Since, such an objective assessment is lacking, the petitioner is justified in entertaining the feeling that the unusual decision to conduct an interview in his case alone was a camouflage to deny him promotion. I am of the opinion that the interview held by the D.P.C. is infirm

and is liable to be declared arbitrary. I do so.

14. In the result, I hold that the decision of the Departmental Promotion Committee finding the petitioner unsuitable for the post of Industrial Relations Officer and its recommendation to fill up the post by direct recruitment is unsustainable. There shall be an order directing the respondents to forthwith promote the petitioner as Industrial Relations Officer. Appropriate proceedings will be issued by the competent among the respondents within one week from the date of receipt of a copy of this judgment. Whether the petitioner can be promoted with effect from 1-8-2006, the date on which the post of Industrial Relations Officer fell vacant and whether he is entitled to monetary benefits on that basis, are left open to be decided by the respondents in accordance with law, upon representation to be filed by the petitioner claiming such benefits.

The writ petition is disposed of as above.

K.K. DENESAN
JUDGE

jan/